

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTENTH REGION

Tulsa, Oklahoma

UNITED PARCEL SERVICE

Employer

and

Case 17-RC-12156

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION 516

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 1/
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 2/

All hazardous materials package audit clerks and high value package audit clerks employed at the Employer's 5805 S. 118th East Avenue, Tulsa, Oklahoma, facility, EXCLUDING guards and supervisors as defined in the Act, and all other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL UNION 516

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge of the Subregion who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Region 17 office on or before February 20, 2003. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by February 27, 2003.

Dated February 13, 2003

at Overland Park, Kansas

Regional Director, Region 17

1/ The Employer is a corporation incorporated in the states of Ohio and New York and is engaged in the interstate shipment of goods and parcels from its 5805 S. 118th East Avenue, Tulsa, Oklahoma facility.

2/ The Petitioner seeks a unit consisting of all hazardous materials and high value package audit clerks employed by the Employer at its Tulsa facility, excluding all other employees, guards and supervisors as defined in the Act. The Employer contends that the petitioned-for unit is inappropriate and made a motion at the hearing to dismiss the petition.

THE ISSUES AND DETERMINATION

In support of its motion to dismiss, the Employer contends that: (1) the petitioned-for unit is based solely on the extent of organization; (2) Warren McKinley, David Smith and Jamie Nunley, the employees identified by the Petitioner as included in the petitioned-for unit, do not share a community of interest; and (3) the parties' bargaining history shows that only a nationwide, multi-facility unit is appropriate for bargaining. In contrast, the Union asserts that the three employees share a community of interest such that they constitute an appropriate unit for bargaining under the Act. In the alternative, the Union contends that McKinley, Smith and Nunley, along with the facility's Tower Clerk, should constitute a residual unit and that a self-determination election be conducted. For the reasons set forth below, I find that McKinley, Smith and Nunley constitute an appropriate unit of the Employer's high value package audit clerks and hazardous materials package audit clerks at its Tulsa facility.

THE FACTS

The Tulsa Facility

The Employer's Tulsa facility is one of its nationwide network of shipping facilities. The facility houses the following "package centers": Tulsa North, Tulsa South, Tulsa East, Tulsa West and Broken Arrow. The record reflects that the package centers are not separated by any physical barriers and employees in the centers work within 20 to 50 feet of each other. Each center is managed by an Operations Management Specialist, with one or more full-time and part-time supervisors and a business manager. The centers are part of the Employer's Oklahoma District, which is part of its Southwest Region. Human Resources Manager Angie Brewer testified that the shipping and receiving policies and procedures at the Tulsa facility centers are identical to those in place at all of the centers in the Employer's national operation.

Collective-Bargaining History

The Employer began its collective-bargaining relationship with the International Brotherhood of Teamsters (IBT) in 1979 with the signing of a national collective-bargaining agreement known as the National Master Agreement (NMA). Prior to that time, the Employer had many collective-bargaining agreements with numerous IBT locals. The current NMA is effective August 1, 2002 to July 31, 2008. As reflected in Employer's Exhibit 1, the NMA provides for the following single national bargaining unit including:

Feeder drivers, package drivers, sorters, loaders, unloaders, porters, office clerical, clerks, mechanics, maintenance personnel (building maintenance), care washers, United Parcel Service employees in the Employer's air operation, and to the extent allowed by law, employees in the export and import operations

performing load and unload duties, and other employees of the Employer for whom a signatory Local Union is or may become the bargaining representative.

The Employer and IBT also maintain various supplemental agreements covering terms and conditions of employment for employees in certain regions of the U.S. Thus, bargaining unit employees at the Tulsa facility are covered by the NMA and the Southwest Region Supplement.

The Employer has separate personnel policies for its approximately 400-500 Teamster-represented employees and its 14 unrepresented employees at the Tulsa facility. Thus, Human Resources Manager Brewer administers personnel policies for unrepresented employees through the Employer's Human Resources office in Oklahoma City. Brewer testified that all full-time and part-time employees throughout the Employer's nationwide operations receive the same holidays, vacation days, sick leave and retirement. District Labor Manager Debbie Walker administers personnel policies pursuant to the collective-bargaining agreement from the Oklahoma City office.

The Employees at Issue

The record reflects that, in addition to the Employer's approximately 400-500 Teamster-represented employees at the Tulsa facility, it employs 10 counter clerks who are subject to potential Teamster representation under a card check agreement, and 4 other unrepresented employees. The latter four employees are Warren McKinley, David Smith, Jamie Nunley and a Tower Clerk who was not identified by name on the record. Human Resources Manager Brewer testified that McKinley, Smith and Nunley hold the position of Package Center Associates, Grade Level 4 Administrative Employee. However, the record reflects a lack of consensus among the witnesses about McKinley,

Smith and Nunley's title. Thus, McKinley testified that his title is "clerk." Smith recalled that the Employer's computer identified him as a "secretarial auditor" or "clerk." Supervisor Lesa Godfrey referred to these employees as "clerks." Supervisor Don Tyler referred to the employees as "Outside Clerks," a term that arose when such clerks were hired by "outside" employment agencies. The record is clear that the Petitioner seeks to include McKinley, Smith and Nunley in the unit described in its petition.

McKinley, Smith and Nunley

The record reflects that McKinley works about 17 hours per week in the Tulsa East and Broken Arrow Centers. McKinley works 5:00 p.m. to 8:30 p.m. Monday through Friday and is supervised by part-time supervisors Tibbs and Alex. McKinley testified that his workday consists of auditing "high value packages" with values below \$5,000, international packages and packages containing hazardous materials. Auditing such packages consists of reviewing the paperwork associated with the packages and, in some cases, physically inspecting the packages. McKinley testified that, occasionally, as directed by a supervisor, he opens high value packages and inspects their contents if he suspects the contents have been damaged. McKinley has a "Hazmat" certification, for which the training and annual testing is provided by the Employer. The record reflects that McKinley performs hazardous material audits by inspecting the paperwork accompanying packages containing hazardous materials.

Smith gave similar testimony with respect to his job duties. Thus, Smith works approximately 17 hours per week in the Tulsa North and Tulsa West Centers. Smith works Monday through Friday, 5:00 p.m. to 8:30 p.m., and is supervised by supervisors Caleb DeRosen and Jason Richards. Smith's workday also consists of checking high

value packages with values below \$5,000 and checking international packages. Smith does not have a “Hazmat” certification.

Nunley did not testify. However, the record reflects that she works part time in the Tulsa South Center. Nunley is supervised by Barry Blish and John Lee. Her duties include checking high value packages with values below \$5,000 and checking international packages. Nunley has “Hazmat” certification and, like McKinley, performs paperwork audits on packages containing hazardous materials.

McKinley, Smith and Nunley perform additional duties during each shift. These employees receive and sort various types of paperwork from drivers, including drivers’ logs, delivery record corrections (DCRs) and “CODs”. The drivers’ logs and DCRs are placed in bags to be shipped to one of the Employer’s facilities in California, while the COD documents are shipped to a Kentucky facility. These employees also audit international packages by comparing information printed on such packages with information on accompanying paperwork. They also print out and file “pre-load reports,” which reference packages that have been loaded onto the trucks.

The record reflects disagreement concerning the proportion of McKinley, Smith and Nunley’s 3 1/2 hour shift spent on their various duties. Considering the record as a whole, I find that these employees spend approximately 1-3 minutes auditing each of approximately 30 high value packages per night. McKinley and Nunley spend approximately 2-3 minutes auditing approximately 5 hazardous materials packages per night. Most of the balance of their work time is spent handling drivers’ logs, DCRs, CODs, pre-load reports and conducting audits on international packages. The record

reflects that McKinley, Smith and Nunley are the only *employees* performing these functions.

The record also reflects that various supervisors perform some of the duties performed by McKinley, Smith and Nunley. Thus, supervisor Lesa Godfrey testified that high value audit work, international paperwork auditing and the sorting of various other types of documentation is performed by McKinley, Smith and Nunley as well as OMS supervisors. The record reflects, however, that while McKinley, Smith and Nunley check high value packages valued between \$1,000 and \$4,999, only supervisors perform such checks on high value packages valued at \$5,000 and above. The record reflects that, in addition to McKinley and Nunley, supervisors Vernon Musgrove and Jimmy Anderson perform hazardous materials audits.

In addition to performing essentially the same duties, the record reflects other similarities among McKinley, Smith and Nunley. Thus, when one of them is absent, one of the other two covers the absent employee's duties. McKinley, Smith and Nunley receive, or are eligible for, the same vacation, leave, retirement and healthcare benefits.

With respect to interaction among other employees, the record reflects that McKinley, Smith and Nunley have casual conversations with drivers during their shift as the drivers enter the facility and submit their paperwork. McKinley, Smith and Nunley park in the employee parking area, enter the facility through the general employee entrance and take their breaks in the common break area. The record reflects that these employees work alone in their immediate work areas, but are in close enough proximity (15 to 50 feet) to each other to hold conversations. McKinley and Nunley have additional contact with Smith when Smith needs them to perform hazardous materials package

audits. Neither McKinley, Nunley nor Smith have direct communication with employees working at the Employer's other facilities.

With respect to supervision, the record reflects that McKinley, Smith and Nunley's supervision depends on which package center they are assigned during a given shift. Each center has three layers of supervision, including two part-time supervisors.

With respect to the Employer's entire national operation, the record reflects that the duties performed by McKinley, Smith and Nunley at the Tulsa facility are performed by employees at all other package centers.

The Tower Clerk

The Tower Clerk is responsible for the flow of the belts within the facility. To this end, the Tower Clerk uses a computer that controls the speeds of the various belts, thereby maintaining an even flow of packages throughout the facility.

ANALYSIS

The Standard of Review

In determining the appropriateness of a unit, the Board looks first to the petitioned-for bargaining unit and, if it describes an appropriate bargaining unit, the analysis ends. Dezcon, Inc. 295 NLRB 109, 111 (1989). Indeed, Section 9(b) of the Act does not require the Board to identify the *most* appropriate unit, but rather *an* appropriate unit. Morand Brothers Beverage Co., 91 NLRB 409, 418 (1950) *enfd.* 190 F.2d 576 (7th Cir. 1951). A petitioner is not required to seek the most comprehensive grouping of employees unless an appropriate unit compatible with that requested does not exist. P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963). Such a policy aims at guaranteeing

employees the fullest freedom in exercising the rights guarantee by the Act. National Cash Register Co., 166 NLRB 173, 174 (1967).

The Petitioned-For Unit is Clearly Identifiable on the Record

The Employer takes issue with the Petitioner's unit description on the basis that it describes jobs which do not exist. Contrary to the Employer's position, the Union's failure to precisely identify the classifications sought is not fatal to its petition. Moreover, the record reflects considerable confusion, even among the Employer's managers, as to the title of the positions held by McKinley, Smith and Nunley. The record is clear, however, that the Petitioner seeks to represent these employees and identifies them based on their performance of, primarily, high value package and hazardous materials audits.

Employees in the Petitioned-For Unit Share a Community of Interest

In determining whether a petitioned-for unit constitutes an appropriate unit, the Board looks to the community of interest of the employees involved. Determinants used in weighing such interest among a group of employees include the degree of functional integration of the employees sought, the existence of common supervision, the nature of the employees' skills and functions, the interchangeability and contact among employees, and the employees' working conditions. The existence or absence of any single factor is not determinative of the issue. Rather, the Board weighs all relevant facts against each determinant. See, e.g., Texas Empire Pipe Line Co., 88 NLRB 631, fn. 2 (1950) (absence of common supervision is not a per se basis for excluding employees from an appropriate unit).

Employees Skills and Functions; Functional Integration

McKinley, Smith and Nunley share the common function of performing high value audits and receiving and filing various paperwork related to packages handled by the Employer's drivers. McKinley and Nunley also perform hazardous materials audits and Smith is dependent on McKinley and Nunley for performing such audits. The Employer contends that much of this work is also performed by other employees at the facility, including supervisors and bargaining unit employees. However, this contention is not supported by the record. Rather, the testimony of supervisors Godfrey and Tibbs, along with the testimony of McKinley, Smith and Nunley, establish that only these three employees and a few supervisors actually perform these functions. Labor Relations Director Walker, who has no apparent responsibility for assigning work at the Tulsa facility, speculated that other employees could perform these functions, but did not testify as to whether such work has actually taken place. Clearly, the Employer has seen fit only to assign these tasks to these three employees and, if needed, to their supervisors.

While the Employer's operation is clearly highly integrated, McKinley, Smith and Nunley's place in the operation is unique. This fact is reflected in both their distinct work assignments and in the Employer's policy that McKinley, Smith and Nunley exclusively substitute for each other in the event of an absence.

Common Supervision

The record reflects that McKinley, Smith and Nunley are each assigned a supervisor based on the center in which they are working during a given period of time. The record reflects that they each have separate supervisors. However, the assignment of different supervisors to these employees appears to be related to their assignment to different package centers within the facility.

Interchange and Contact Among Employees

McKinley, Smith and Nunley meet and have conversations during every shift. They work in close proximity with each other. Smith, who lacks “Hazmat” certification, seeks out McKinley and Smith for the performance of hazardous materials audits. While each of these employees has opportunities to have casual conversations with drivers, their work-related contact with other employees appears limited to retrieving various items of paperwork which they, and in some cases their supervisors, have responsibility for handling. McKinley, Smith and Nunley do not otherwise communicate with other employees as part of their daily tasks.

The record is clear that the Employer assigns McKinley, Smith and Nunley to cover for each other when one of them is absent. While the Employer contends that these employees perform work assigned to bargaining unit employees, Smith testified that he was disciplined for taking packages to the conveyer belts because, in the view of his supervisors, such work is properly assigned only to bargaining unit employees. Overall, the record shows that the Employer assigns unique tasks to McKinley, Smith and Nunley and generally bars them from venturing into other areas of the operation.

Working Conditions

In addition to working in close physical proximity to each other, McKinley, Smith and Nunley work subject to similar terms and conditions of employment. Thus, these employees work the same part-time shift, although each is assigned to a different package center or centers. The three employees take 5 to 10 minute breaks in the common break area. They are subject to the same personnel policies. These policies apply to all unrepresented employees at the Tulsa facility. However, McKinley, Smith and Nunley

are among a small number of unrepresented employees at the facility and, based on their job assignments, are unique among even the group of unrepresented employees.

McKinley, Smith and Nunley are subject to different personnel policies from the vast majority of employees at the facility who are covered by the NMA.

The Facts Demonstrate a Sufficient Community of Interest

Overall, the record reflects that, by the Employer's design, McKinley, Nunley and Smith perform unique tasks. To this end, the Employer has isolated them for the purposes of performing these tasks, assigns them identical levels and types of supervision and schedules them for the same shift. The terms and conditions of employment for these employees are different from nearly all other employees at the facility. I find that these factors establish a sufficient community of interest among the three employees, such that the petitioned-for unit constitutes an appropriate unit for collective bargaining.

A Single-Facility Unit is Appropriate

The Employer contends that, even assuming the petitioned-for unit identifies an appropriate unit at the Tulsa facility, the nature of the Employer's operation and its history of collective bargaining mandate that only a multi-facility unit is appropriate. While these factors are significant, they must be weighed against the employees' right to self-organization and freedom of choice in collective bargaining. See Kalamazoo Paper Box Co., 136 NLRB 134, 137 (1962). The burden is on the Employer in this matter to rebut the presumption that a single-facility unit is appropriate. Hegins Corp., 255 NLRB 1236 (1981).

The Employer cites United Parcel Service, 325 NLRB 37 (1991), in support of its contention that its history of collective bargaining with IBT mandates that an appropriate

unit in this matter can only be a multi-facility unit. In United Parcel Service, the Board upheld the Region's Decision and Order in which it dismissed a UC petition filed by a Teamsters local. In affirming the Region's decision, the Board observed that the union sought to accrete the Employer's administrative assistants working in the Kansas district, but did not seek to include any of the Employer's other administrative assistants working at other facilities. The Board held that, given that the union was seeking to include the administrative assistants into an existing multi-facility unit, it was inappropriate to exclude such employees at facilities outside of the Kansas district.

United Parcel Service is distinguishable from the instant matter on its facts and on the policy considerations involved. Thus, the Petitioner here does not seek to include McKinley, Smith and Nunley in the larger national bargaining unit through an accretion. Rather, it seeks an election in a distinct unit of the three hazardous materials and high value package clerks. In United Parcel Service, the issue squarely before the Board was whether to change the parties' national collective-bargaining unit by adding only a portion of the unrepresented work force in a relatively small number of facilities. The Board's decision in that case reflects its restrictive policy in finding an accretion because such action, by its nature, forecloses an employee's basic right to select his bargaining agent. Towne Ford Sales, 270 NLRB 311 (1984). Such considerations do not apply in this case.

In its brief, the Employer correctly identifies the variety of factors used to determine whether the single-facility presumption has been rebutted. The record does reflect some degree of functional integration, including centralized control over labor relations policies. However, the record also reflects that, while division managers may

pass judgment on discipline of employees in the proposed unit, it appears that supervisors have some autonomy in directing the work of these employees and applying the Employer's discipline policies. Supervisor Tyler testified that the Tulsa facility's 50 to 60 supervisors all share responsibility for enforcing work rules, and discipline issues are taken to the district level only when the issue cannot be resolved locally. Thus, Smith's supervisor has on several occasions warned him about performing work outside his job description.

The record shows neither substantial employee interchange *between* the Tulsa facility and other facilities nor substantial common supervision among employees at the various other facilities. There is no contact between the employees in the petitioned-for unit and employees working at the Employer's other facilities. There is no evidence of employee transfers between the Tulsa facility and other facilities. The existence of elements of functional integration, including centralized control of labor relations policies, does not mandate a multi-facility unit where, as here, the evidence shows sufficient local autonomy of the single facility and no employee interchange between facilities. See New Britain Transportation Co., 330 NLRB 397 (1999); J&L Plate, 310 NLRB 429, 430 (1993) (minimal employee interchange and lack of meaningful contact between employees at the employer's two facilities diminished the significance of other factors showing functional integration).

The facts in this matter differ from R&D Trucking, 327 NLRB 531 (1999) and Gray Drug Stores, 197 NLRB 924 (1972), which the Employer cites in its brief. In both cases, the Board found the single-facility presumption had been rebutted. In R&D Trucking, the Board found significant that the employer did not assign a manager to the

facility at issue and determined that the facility, therefore, lacked sufficient local autonomy from the employer's other nearby facility. 327 NLRB at 532. Here, it is clear that the Employer has assigned numerous layers of supervisors, all with the authority to administer some stages of discipline at a local level. In contrast to the facts of the instant matter, the Board also found substantial interchange and permanent transfers among employees at the two facilities. *Id.* at 532. Likewise, Gray Drug Stores is distinguishable on its facts because the Board found 600 temporary transfers between the employer's facilities during a 6-month period and a substantial number of permanent transfers. 197 NLRB at 925. The employer in Gray Drug Stores also assigned several supervisors to visit each of its facilities several times per week. *Id.* at 924-925. No such level of common supervision or employee interchange is in place at the Employer's facilities in this matter.

Under the circumstances, I find that the existence of a national collective-bargaining relationship between IBT and the Employer, coupled with the nature of the Employer's multi-facility operations, do not erase the Tulsa facility's separate identity. A single facility unit is, therefore, appropriate.

The Petitioned-For Unit is Not Based Solely on the Extent of Organization

Section 9(c)(5) of the Act states in pertinent part:

in determining whether a unit is appropriate...the extent to which the employees have organized shall not be controlling.

The Board and the United States Supreme Court have interpreted this provision to mean that extent of organization shall be given weight, but not controlling weight. Overnite Transportation Company, 322 NLRB 723 (1996); NLRB v. Metropolitan Life Insurance

Co., 380 U.S. 442 fn. 4 (1965). The Employer speculates that the Petitioner has based its proposed unit only on the extent of its organization of the facility.

As discussed above, the petitioned-for unit is clearly identifiable and includes employees who share a significant community of interest. Even assuming the petitioned-for unit is based, in part, on the extent of the Petitioner's organization of the facility, the community of interest factors outlined above demonstrate that extent of organization is not a controlling factor in this decision. Consolidated Papers 220 NLRB 1281 (1975).

CONCLUSION

Based on the foregoing, I conclude that the petitioned-for unit of the Employer's hazardous materials and high value package clerks, currently consisting of employees McKinley, Smith and Nunley, constitute an appropriate unit for collective bargaining, and I shall direct an election in that unit. In view of this finding, the Employer's motion to dismiss the petition is denied. In addition, as the petitioned-for unit has been determined to be appropriate, I find that it is unnecessary to decide the Petitioner's alternative position that a self-determination election should be conducted in a residual unit.

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